

1 JUDGE FRYSIAK: Five minutes?

2 MR. SCHAUBLE: That would be fine.

3 JUDGE FRYSIAK: Okay. Be back at 2:30.

4 THE WITNESS: Thank you, Your Honor.

5 (Whereupon, a short recess was taken.)

6 JUDGE FRYSIAK: All right. We are back on the
7 record. Mr. Schauble, you may continue.

8 MR. SCHAUBLE: Thank you, Your Honor.

9 BY MR. SCHAUBLE:

10 Q Mr. Kay, I would like to direct your attention to
11 Wireless Telecommunications Bureau Exhibit 39. That is the
12 December 30, 1994 management agreement.

13 A Yes, sir.

14 Q And specifically, direct your attention to Page 3
15 of the agreement, Paragraph III Maintenance Services to Be
16 Provided.

17 A Okay.

18 Q Is it correct that under this provision, you have
19 a sole and exclusive right to determine who works on
20 maintaining and repairing the facilities of the management
21 agreement stations?

22 A It does. However, I never in any way figured that
23 precluded Mr. Sobel.

24 Q Is it correct that there is nothing in this
25 agreement which says Mr. Sobel will get first call or has

1 the right to work on the management agreement stations?

2 A Well, it doesn't, but it is a basic assumption
3 that Mr. Sobel will always be first on.

4 JUDGE FRYSIK: The assumption is what?

5 THE WITNESS: That Mr. Sobel would certainly be
6 called in regards to his station. You know, I like to know
7 who's working on my stations, and I know he likes to know
8 who's working on his stations. The assumption here was
9 always that he would have first crack at it.

10 BY MR. SCHAUBLE:

11 Q Okay. Mr. Kay, please turn to Page 7 of this
12 exhibit.

13 A Yes.

14 Q Specifically, Paragraph 20. Do you see that
15 language?

16 A Yes.

17 Q Is the representation that is made in there
18 correct?

19 A The entire agreement that's what you're referring
20 to?

21 Q Yes.

22 A I don't understand part of this here. This is a
23 boilerplate that came from --

24 JUDGE FRYSIK: I cannot hear you.

25 THE WITNESS: Sorry. This is boilerplate that

1 came from the lawyers. I don't 100 percent understand what
2 part of this is. "May not be changed except by written
3 instrument signed by the party against who enforcement of
4 such change is sought." I don't know what they're meaning
5 here against whom enforcement of such change is sought.

6 BY MR. SCHAUBLE:

7 Q Let me ask the question this way. Do you have any
8 other written agreement with Mr. Sobel concerning the
9 management agreement stations, other than this and WTB
10 Exhibit 40, which is the addendum and amendment?

11 A No other written ones. But it's basically been
12 our practices and procedures as far as how Mr. Sobel and I
13 have -- how his stations were to be managed, what each of us
14 was to do, our understandings. This was boilerplate for the
15 lawyers and pretty close.

16 JUDGE FRYSIK: What?

17 THE WITNESS: This was boilerplate from the
18 lawyers. And it fit pretty close here. And many times
19 we'll deviate from the written letter of contracts. I've
20 got repeater contracts, and we change them and modify them
21 as we needed with my customers. It's not a going thing.

22 BY MR. SCHAUBLE:

23 Q Mr. Kay, is it correct that you have devoted time
24 and effort to attempting to clear the channels in which the
25 management agreement stations are located?

1 A Not solely the management stations. My own
2 stations, as well.

3 Q Well, you have done that work, both for the
4 stations you own and the management agreement stations.
5 Correct?

6 A Of course. It opens up additional capacity for us
7 to provide service on.

8 Q What sort of work is involved in attempting to get
9 a channel clear?

10 A Well, you pick which one you want to work on that
11 day. You've got a list of the licensees there on there, and
12 it's almost like a branch type. Here's a license. Is it
13 valid? Does the customer exist? Is he still there? Is he
14 using the radios? Is he happy with the service? Can we
15 sell him new service? Can we sell him any radios? Is he
16 open to a deal? And we pursue down that line. If some
17 customers will -- They aren't there. And you can write the
18 Commission and get it canceled, or we could file a finder's
19 preference.

20 Or if we find that the customer is there, but they
21 discarded the radios a long time ago. Some of them follow
22 the rules and cancel off their license for you. Some won't.
23 Some want money for it. Depending on how much they want, we
24 may or may not pay them for it. Others will happily sign on
25 board with us for a reduced rate or some free radios or want

1 trunking radios. We'll make whatever deal we can with the
2 customer. Sometimes we can make the deal. Sometimes we
3 can't.

4 Q How much time have you spent on this sort of work?

5 A Well, recently very little, because, to put it
6 mildly, very slim pickins'. Years ago, we put a fair amount
7 of effort into it.

8 Q In 1993, would this be something that you would
9 work on, on a daily or weekly basis?

10 A At least weekly basis. In '93, we had an
11 excellent opportunity to go do that. There were a lot of
12 licensees left. There's practically nothing left on 800
13 now.

14 Q You would also spend money in this effort?

15 A Well, you spend money just sending your personnel.
16 You spend money hammering on the ISI Database and getting
17 printouts. You spend money with ITS getting records. You
18 spend money when you call the customer. Of course, we spend
19 money doing it. If a customer made a deal, we could provide
20 equipment. We could provide service at discount rates. Of
21 course, we spent money.

22 Q Would it be correct that you cannot separate out
23 the time and money you spent doing this work, with respect
24 to the stations you to the time and money and work you
25 spent, with respect to the management agreement stations?

1 A I think I concentrated more of my efforts towards
2 my own stations, or sometimes we'd pick a particular
3 frequency and go after it.

4 Q Could you give me an estimate as to how much time
5 you devoted to attempting to clear channels on the
6 management agreement stations?

7 JUDGE FRYSIAK: What in 1993?

8 MR. SCHAUBLE: In 1993.

9 THE WITNESS: It'd be very difficult to guess. A
10 lot of the ones in '93 were -- We took over a number of
11 customers from a company that no longer wanted to run
12 community repeaters. So, we had a very easy job doing it.
13 As for amount of time, it would be very hard for me to
14 guess. I'd probably say I spent on average, maybe, four or
15 five hours a week. Though, it was concentrated far more
16 near the end of the year, where I had one major acquisition
17 of customers, which took an extensive amount of time.

18 BY MR. SCHAUBLE:

19 Q Just so the record is clear, that would be time
20 you spent total on this sort of work, regardless of whether
21 you were doing it for a station you owned or a station you
22 managed? Or would this specifically with respect to the
23 management agreement stations?

24 A That would be both, together. I couldn't really
25 break it down. Far more of the customers were towards my

1 stations, than were towards the managed stations. I think
2 there were only two frequencies then, that involved the
3 managed stations that we accumulated customers on.

4 Q Do you remember approximately how many frequencies
5 were involved total? Again, I am asking the question with
6 respect to 1993.

7 A Probably 60 or 70.

8 Q It is correct, Mr. Kay, that you have an exclusive
9 option to purchase any of the management agreement stations.
10 Correct?

11 A Correct.

12 Q The option price for each station is \$500?

13 A That's what's in the contract. Correct.

14 Q Did you and Mr. Sobel agree that you would have
15 this option before you entered into a written agreement with
16 Mr. Sobel?

17 A That I'd have the option to purchase them?

18 Q Yes.

19 A Yes.

20 Q Did you ask for that option?

21 A That would be in the contract.

22 Q When the first idea came about of you having an
23 option to purchase the stations, were you the one who asked
24 Mr. Sobel for the option?

25 A Yes. I believe so. It's quite some time ago. I

1 believe I was.

2 Q Why did you ask for that provision?

3 A Well, I'm writing five year contracts with my
4 customers to resell air time on Mr. Sobel's stations. If
5 Mr. Sobel sold a station, I've got five year contracts, and
6 I may or may not be able to honor. And I don't want to get
7 left, how do I say, high and dry, without being able to meet
8 my customer's needs on the stations that I had managed. I
9 need somehow or other, to protect myself having customers at
10 Mr. Sobel's stations.

11 Q Is it correct that you arranged for the sale of
12 certain management agreement stations?

13 A One that I recall.

14 Q That was a station that was sold to Henry Matson?

15 A Yes.

16 Q How much was that station sold for?

17 A I don't remember precisely. I think I told you it
18 was somewhere between \$70,000 to \$90,000. It may have been
19 as high as a \$100,000, but I don't remember precisely.

20 Q Of the sale proceeds, how much of the money did
21 you receive?

22 A Well, it wasn't a percentage.

23 Q How much money did you receive from the proceeds
24 of that sale?

25 A Well, I received \$20,000 less than what the sale

1 price was.

2 Q Okay.

3 A Because Mr. Sobel I believe got \$20,500.

4 Q Mr. Kay, please direct your attention to Wireless
5 Telecommunications Bureau Exhibit 47. It is the last one in
6 the notebook.

7 A Yes.

8 Q On Page 6, is that your signature under James A.
9 Kay, Jr?

10 A Actually, it's above it, but yes.

11 Q Above it. Excuse me. This is an agreement under
12 which you purchased the assets of AirWave Communications if
13 Mr. Sobel dies?

14 A Correct.

15 Q Turn to Page 2, Paragraph 4.

16 A Yes.

17 Q Do you see there is a reference in there to a life
18 insurance policy that you are to maintain?

19 A Yes.

20 Q Is that life insurance policy in affect?

21 A Yes.

22 Q What is the current amount of that policy?

23 A It's either \$250,000 or \$300,000. I think it's
24 \$250,000.

25 Q Mr. Kay, please direct your attention to Wireless

1 Telecommunications Bureau Exhibit 42.

2 A Okay.

3 Q On the last page, Page 26.

4 A Okay.

5 Q Is that your signature on the affidavit?

6 A Yes, it is.

7 Q Do you recognize this document as a pleading that
8 was filed on your behalf with the Commission?

9 A Yes.

10 Q If you turn to Page 25, the second to last page,
11 the affidavit of Marc Sobel.

12 A Yes.

13 Q I would ask you compare that page and WTB Exhibit
14 41. My question is, are they the same document?

15 MR. FRIEDMAN: Is there a Page 41 you want us to
16 compare?

17 MR. SCHAUBLE: Forty-one is the --

18 THE WITNESS: Yeah. The pen strokes are all the
19 same, where Marc signed it and dated it. I assume the same
20 document.

21 BY MR. SCHAUBLE:

22 Q Now, at the time this pleading was filed, your
23 licenses had been designated for hearing. Correct?

24 A That's correct.

25 Q And certain of Mr. Sobel's licenses had been

1 designated for hearing, along with your licenses. Correct?

2 A Well --

3 MR. KELLER: Your Honor, I object, on the same
4 clarification grounds. The record will reflect what I said
5 yesterday. Let's let it reflect that I have the same
6 concerns about the phrasing.

7 MR. SCHAUBLE: Let me rephrase the question, Your
8 Honor.

9 BY MR. SCHAUBLE:

10 Q Certain of Mr. Sobel's licenses were included in
11 the Designation Order that was issued in this proceeding.
12 Correct?

13 A They erroneously listed a series of Marc Sobel's
14 licenses as being mine in that Hearing Designation Order.

15 Q Mr. Kay, please direct your attention to WTB
16 Exhibit 44.

17 A Okay.

18 Q Turn to the last page of the exhibit.

19 A Okay.

20 Q Is that your signature on the affidavit?

21 A Yes, it is.

22 Q Do you recognize the exhibit as a pleading filed
23 on your behalf at the FCC?

24 A Yes. It was prepared by my attorneys.

25 Q Is it correct that WTB Exhibit 44 was filed

1 because WTB Exhibit 42 was originally misfiled by your
2 attorneys?

3 A I know they had to redo it.

4 Q Okay.

5 A They said something about having filed it with the
6 Commission, as compared with the presiding officer. I'm not
7 a lawyer. I didn't understand. They were running the whole
8 ball here.

9 Q Okay. Turn to your attention to Page 22 of
10 Exhibit 44.

11 A Okay.

12 Q Do you see the affidavit of Marc Sobel there?

13 A Yes, I do.

14 Q My question is, can you compare that to WTB
15 Exhibit 43, and tell me, are those the same document?

16 A Same pen strokes. Sure look the same.

17 Q Okay. Mr. Kay, please turn back to WTB Exhibit
18 41.

19 A Okay.

20 Q Is it correct you first saw this document in
21 unexecuted form on January 9 or 10, 1995?

22 A That sounds right.

23 Q You received it from Brown & Schwaninger?

24 A It was Federal Expressed to me by them.

25 Q Brown & Schwaninger were your attorneys?

1 A They're also Marc's attorneys.

2 Q Is it correct you called Mr. Sobel and told him
3 your attorney had pleadings to file, and asked him to come
4 in and review this affidavit?

5 A Well, I received the package. I read it. I
6 talked to my attorneys, and I called Mr. Sobel, and said
7 that there was an affidavit that my attorneys wanted him to
8 read. And if correct, execute it.

9 Q And Mr. Sobel, in fact, came in and reviewed the
10 affidavit. Correct?

11 A Correct.

12 Q In fact, Mr. Sobel had a question for you about
13 the affidavit. Correct?

14 A I believe he may have had two.

15 Q One of the questions was he asked you about the
16 meaning of the word "interest" in the affidavit. Correct?

17 A Yes.

18 Q You told him that, to the best of your knowledge,
19 as it had been explained to you, it referred to ownership as
20 in a partnership or ownership of stock, as having a direct
21 financial stake in something. Being an owner or a
22 stockholder or direct party to something. Correct?

23 A Correct.

24 Q Mr. Kay, isn't it true that you have a direct
25 financial stake in the management agreement stations?

1 A How do you mean? I mean, I'd suffer a financial
2 loss if they went away. If Marc Sobel sold them, I'd have
3 to move some of my customers.

4 JUDGE FRYSIAK: On an ongoing basis, do you have a
5 financial stake in those stations?

6 THE WITNESS: Not in the licenses.

7 BY MR. SCHAUBLE:

8 Q But you have a stake in the stations, don't you?

9 A Well, I have some hardware up there. If they
10 wouldn't be doing that, they'd be doing something else.

11 Q The revenues from these stations go into your bank
12 account. Correct?

13 A Why I wouldn't get the -- I'd lose the revenues
14 that I'm entitled to collect pursuant to my agreement with
15 Mr. Sobel.

16 Q Is it also correct that you can buy these stations
17 at any time for \$500 each?

18 A Pursuant to the agreement, that's correct. But
19 that's an option, and it's subject to Commission approval.

20 MR. SCHAUBLE: No further questions, Your Honor.

21 JUDGE FRYSIAK: All right.

22 MR. KELLER: I have very few questions.

23 CROSS EXAMINATION

24 BY MR. KELLER:

25 Q Mr. Kay, do you have any large repeater customers?

1 I mean, ones who you bill a substantially larger amount of
2 money each month?

3 A Yes.

4 Q And you would stand to lose a lot of money if one
5 of those companies went out of business and no longer
6 required your services. Correct?

7 A I'd certainly notice the pinch.

8 Q But do you consider that that gives you a
9 financial interest in those companies?

10 A I certainly want them to do well, but it doesn't
11 give me an interest in them.

12 Q You just testified that you believe that the sale
13 price for the station for Mr. Sobel that you arranged for
14 the sale to Mr. Matson, was between \$70,000 and \$90,000. Of
15 which, Mr. Sobel got \$20,500. That leaves somewhere in the
16 neighborhood of \$50,000 to \$70,000 that came to you.

17 Was there any consideration for your receiving
18 that money? Did you have expenses involved here?

19 A We had to give new radios to some customers and
20 move other customers radios to another frequency, as well as
21 expenses that we had I incurred both legally, gave the
22 channel as good as it was for having cleared other customers
23 off the channel. We'd actually cleared the channel down to
24 one other remaining customer which Matson got a hold of.

25 Q So you discussed this arrangement with Mr. Sobel

1 before the deal was done?

2 A That's the first person I went to.

3 Q And he was satisfied with this arrangement, that
4 it was equitable?

5 A He set the dollar figure. He said he wanted 20
6 grand. I said, fine with me.

7 Q Mr. Kay, you also testified earlier that your
8 employees largely do not know what particular station they
9 are dealing with, in the sense that it is a management
10 agreement station or a station licensed to you or a station
11 licensed to one of your customers as a community repeater,
12 et cetera.

13 Is it a fair characterization for me to say that
14 as far as those salespeople are concerned, they are really
15 not in the business of running repeaters, rather in the
16 business of selling repeater service. Is that correct?

17 MR. SCHAUBLE: Objection. Objection on relevance,
18 Your Honor.

19 JUDGE FRYSIK: Well, it is simply following on
20 what you said. I think it is connected. I will overrule
21 your objection.

22 MR. SCHAUBLE: Thank you, Your Honor.

23 BY MR. KELLER:

24 Q So, they are selling repeater service, as opposed
25 to running repeaters. Is that correct?

1 A They're selling air time. They're selling
2 repeater service.

3 Q They are selling air time. That is really the
4 business that they are involved in.

5 A That's basically what I do, is I sell air time.

6 Q And the air time that you sell is capacity that
7 you draw from a number of different sources. Correct?

8 A Correct.

9 Q Some of those sources might be stations licensed
10 to you, but some of it might be stations license to someone
11 else with whom you go out and make some sort of a
12 contractual arrangement in order to get capacity. Correct?

13 A To the customer, air time is air time. They don't
14 know and don't care where I get it from, as long as they get
15 it.

16 Q You are somewhat familiar with the communications
17 industry in general. Correct?

18 A Correct.

19 Q So you are aware that when you make a long
20 distance call across the country using MCI, that maybe all
21 parts of that call are not carried by MCI. Correct?

22 A I wouldn't know and wouldn't care, as long as the
23 call goes through.

24 Q But you still consider MCI, in this example, as to
25 being your customer. That is who you are going to pay your

1 money to?

2 A Correct.

3 Q What you are paying them for is providing the
4 service, not particular facilities?

5 A Correct. All the customer is really concerned
6 with is that the radio works.

7 MR. KELLER: I have no further questions, Your
8 Honor.

9 JUDGE FRYSIK: All right. Thank you. Mr.
10 Schauble, do you have any redirect?

11 MR. SCHAUBLE: I believe --

12 MR. FENSKE: You mean for Mr. Kellett? We have no
13 cross. Can he step down for a second?

14 JUDGE FRYSIK: All right.

15 MR. KELLER: No further questions.

16 MR. FENSKE: No further questions, Your Honor.

17 JUDGE FRYSIK: Any redirect?

18 MR. SCHAUBLE: No redirect, Your Honor.

19 JUDGE FRYSIK: Okay. Sorry, Mr. Kay, to keep you
20 waiting.

21 THE WITNESS: No problem.

22 JUDGE FRYSIK: You are excused.

23 (Witness excused.)

24 MR. SCHAUBLE: I am glad that we could get the
25 witness off and over with today, Your Honor.

1 JUDGE FRYSIAK: We all join in your happiness.

2 What is your next move?

3 MR. SCHAUBLE: Your Honor, I believe that our
4 presentation is complete.

5 JUDGE FRYSIAK: You do not have any more
6 witnesses?

7 MR. SCHAUBLE: No, Your Honor.

8 JUDGE FRYSIAK: Who are all these people?

9 MR. KELLER: That is only half of what was here
10 yesterday.

11 MR. SCHAUBLE: Observers, Your Honor.

12 JUDGE FRYSIAK: You mean we have come to an end
13 here? As long as there is nothing further, I will close the
14 record.

15 Let us address our attention to proposed findings
16 and replies. Today is the end of July. How about September
17 15 for briefs?

18 MR. SCHAUBLE: That would be fine, Your Honor.

19 JUDGE FRYSIAK: Let's see. We have about ten days
20 for transcripts? I am asking the reporter. Usually, about
21 a month and a half. Who has a calendar here?

22 MR. FENSKE: It is a bigger sized one. We
23 proffered the 13th, which is four weeks. September 15 is
24 also a Monday.

25 JUDGE FRYSIAK: September 15 is a Monday?

1 MR. FENSKE: Yes.

2 JUDGE FRYSIK: That would be for the proposed
3 findings?

4 MR. FENSKE: Yes.

5 JUDGE FRYSIK: For replies, two weeks after that
6 is how much?

7 MR. FENSKE: We see replies, perhaps, as more
8 complex than the findings. Can we have at least three weeks
9 on that, Your Honor?

10 JUDGE FRYSIK: What are the dates?

11 MR. FENSKE: I would proffer the 6th of October?

12 MR. SCHAUBLE: Is that Columbus Day? That might
13 be a federal holiday.

14 JUDGE FRYSIK: That would be too early for
15 Columbus Day.

16 MR. KELLER: According to my notes, Columbus Day
17 is not until the following week. So the 6th of October is
18 fine.

19 JUDGE FRYSIK: That is a Monday?

20 MR. KELLER: Yes.

21 JUDGE FRYSIK: Is that agreeable with the Bureau?

22 MR. SCHAUBLE: Yes, Your Honor.

23 JUDGE FRYSIK: All right. If there is nothing
24 else, thank you very much for your cooperation. I really
25 did not expect you people to finish.

1 MR. SCHAUBLE: Thank you, Your Honor.

2 JUDGE FRYSIK: Mr. Keller, do you want your
3 photographs?

4 MR. KELLER: No. Those are your copies. I had
5 copies made for everybody.

6 JUDGE FRYSIK: Thank you very much.

7 (Whereupon, at 3:02 p.m., the hearing was
8 concluded.)

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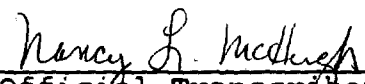
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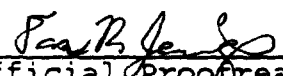
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